(2) Supreme Court, U.S.
FILED

No. 04 325 JUL 22 2004

In The
Supreme Court of the United States

Mark A. Brackman, Petitioner

v.

State of Indiana, et al., Respndent(s)

On Petition For Writ of Certiorari
To the United States Court of Appeals for the 7th Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Mark A. Brackman
P.O. Box 2611
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

FILED
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MARK A. BRACKMAN,)
Plaintiff,)
v.) Civil No. 1:03-cv-068
STATE OF INDIANA, et al.,)
Defendants.)

ORDER

On June 2, 2003, this court entered an order granting defendant Ann Loni Hoang's motion to dismiss, granting the State Defendants' motion to dismiss, and granting defendant Stanley Levine's motion to dismiss. As a result of this order the following defendants were granted a favorable judgment: Ann Loni Hoang; Stanley Levine; the State of Indiana; Steve Carter, Attorney General of Indiana; Governor Frank O'Bannon, Governor of the State of Indiana; and Sue Anne Gilroy, Former Secretary of the State of Indiana. The remaining named defendants in this case are: Allen County Attorney; County of Allen; Allen County Commissioners; Edwin Rousseau; Marla Irving; and Linda K. Bloom. These Defendants are known as the "County Defendants".

On June 2, 2003, the Clerk of the Court inadvertently entered Judgment in favor of all of the defendants. On June 16, 2003, the plaintiff, Mark A. Brackman ("Brackman") filed a Notice of Appeal. On June 25, 2003, the County Defendants filed a motion for summary judgment.

The Clerk's Judgment entered on June 2, 2003 is hereby VACATED and SET ASIDE. However, upon review of this cause the court has determined that there is no just reason for delay in entering a final judgment in favor of defendants Ann Loni Hoang, Stanley Levine, the State of

Indiana; Steve Carter, Governor Frank O'Bannon, and Sue Anne Gilroy. Thus, the Clerk of the Court is instructed to enter an such a Judgment, entering final judgment with respect to these six defendants, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

The County Defendants' motion for summary judgment shall be briefed out in accordance with applicable Local Rules. As Brackman is proceeding pro se, the Court issues contemporaneously therewith a Lewis v. Faulkner notice informing Brackman of his responsibility to Respond to the motion for summary judgment.

SO ORDERED this 27th day of June, 2003.

/s/
William C. Lee, Judge
United States District Court

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
April 30, 2004

Before
Hon. RICHARD A. POSNER, Circuit Judge
Hon. DIANE P. WOOD, Circuit Judge
Hon. ANN CLAIRE WILLIAMS, Circuit Judge

Nos. 03-2649, 04-1189

MARK A. BRACKMAN, Plaintiff-Appellant, v. STATE OF INDIANA, et al., Defendants-Appellees.	Appeals from the United States District Court for the Northern District of Indiana Fort Wayne Division No. 03 CV 068 William C. Lee, Judge

ORDER

On consideration of the petition for rehearing filed by Plaintiff-Appellant on April 15, 2004, all members of the original panel have voted to DENY the petition for rehearing.

Accordingly, the petition for rehearing is DENIED.

APPENDIX #1

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 25, 2004*
Decided March 26, 2004

Before

Hon. RICHARD A. POSNER, Circuit Judge
Hon. DIANE P. WOOD, Circuit Judge
Hon. ANN CLAIRE WILLIAMS, Circuit Judge

Nos. 03-2649, 04-1189

MARK A. BRACKMAN, Plaintiff-Appellant, v. STATE OF INDIANA, et al., Defendants-Appellees.	Appeals from the United States District Court for the Northern District of Indiana Fort Wayne Division No. 03 CV 068 William C. Lee, Judge

ORDER

We consolidated two appeals arising from a single lawsuit filed by Mark Brackman against his minor child's mother, her lawyer, and a number of state and county officials in Indiana. Brackman alleged that the defendants had conspired to deprive him of access to the Indiana courts to prevent him from disputing aspects of a child support order. The district Court initially dismissed one group of defendants and made its order immediately appealable under Fed. R. Civ. P. 54(b); the court later granted summary judgment to the remaining

defendants. Brackman contests both orders, but we conclude that the district court was without subject matter jurisdiction to enter either.

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* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, these appeals are submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2).

The dispute underlying this litigation began several years ago when an Indiana appellate court held that Brackman's veterans' disability benefits could be included as part of his income available to satisfy a child support order. In re Paternity of C.L.H., 689 N.E.2d 456 (Ind. Ct. App. 1997), transfer denied, 698 N.E.2d 1101 (Ind. 1998). Brackman, who lives in Arizona, has been trying to modify this order for some time now under the theory that his veterans' benefits may not be withheld for child support because the benefits are "non-assignable" and exempt from creditors. See 38 U.S.C. § 5301. In November 1999 he sued the same defendants involved here along with the Department of Veterans Affairs and the United States Postal Service in federal court for the District of Arizona, accusing the defendants of violating §5301 by wrongfully garnishing his veterans' benefits to satisfy the support order. After that suit was dismissed in August 2000 for lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine, see Rooker v. Fid. Trust Co., 263 U.S. 413 (1923); D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983), Brackman in November 2000 filed another suit against the same defendants in the Northern District of Indiana. In March

2001 the district court in Indiana likewise dismissed for lack of subject matter jurisdiction.

Brackman then went back to the Indiana state courts. In the summer of 2001 he petitioned the Allen County circuit court that had issued the original child support order to modify his payment obligation, again under the theory that § 5301 rendered his veterans' benefits exempt from withholding. Having received no response to his petition either from the circuit court or from Ann Loni Hoang, his child's mother, Brackman moved for a default judgment, but the circuit court sent him notice of its decision denying his request. Brackman in January 2002 again petitioned the Allen County circuit court for a modification of the support order. Again receiving no response, he moved in March for a default judgment, and at the same time asked the court clerk for copies of three pages of the case record. The clerk returned his payment for the copies along with his motion for default, apparently without explanation. In April he petitioned the Supreme Court of Indiana for a writ of mandamus compelling the circuit court to either grant a hearing on his petitions or enter a judgment of default. Alternatively he asked for the court to appoint a "special judge" to supervise the circuit court. But the supreme court dismissed his petition.

That decision brought Brackman back to federal court. Reasoning that he was unfairly ignored by the Indiana courts. Brackman in February 2003 sued the State of Indiana and several state officials ("state defendants"); Allen County, the county attorney, and county commissioners ("county defendants"); Hoang; and her attorney in the district court for the Northern

District of Indiana under 42 U.S.C. § 1983 and 1985. Brackman alleged that the defendants must have conspired to keep him out of state court because the Allen County circuit court had failed to grant a hearing on his petitions or enter a default judgment; he also alleged that the defendants had

conspired to wrongfully withhold his veterans' benefits to satisfy his child support obligation. He sought both declaratory and pecuniary relief in the neighborhood of $330 million.

The state defendants along with Hoang and her lawyer moved to dismiss. The district court granted the motion in early June but inadvertently entered an order dismissing Brackman's complaint against all of the defendants. Later that month the court realized the mistake and corrected the order of dismissal to include only the state defendants, Hoang, and her lawyer. The Court, however, entered its amended order under Fed. R. Civ. P. 54(b) so that Brackman could appeal the decision immediately. The court reasoned that the Eleventh Amendment barred Brackman from proceeding against the state defendants, and that anyway it lacked jurisdiction under the Rooker-Feldman doctrine to consider his claims to the extent they related to the child support order. And the court concluded that neither Hoang nor her attorney were state actors for purposes of the civil rights statutes. The court further observed that this was the third time Brackman had contested the child support obligation in federal court and sanctioned him by ordering that any subsequent complaints naming Hoang would have to be reviewed by the court to prevent her harassment.

Brackman accepted the invitation to appeal immediately, and we docketed his appeal from the June 2003 order as case no. 03-2649. Meanwhile, while briefing proceeded in that appeal, the litigation continued in the district court. In October 2003 the court granted summary judgment to the remaining county defendants, Fed. R. Civ. P. 56, because Brackman had produced no evidence that these defendants had taken any action with respect to him, or that any of them had a duty or the authority to supervise the circuit court or its staff. Brackman filed another appeal from this order, which we docketed as case no. 04-1189.

We cannot understand how Brackman's lawsuit proceeded so far. Both of the claims raised in his complaint - denial of access to the state courts and wrongful inclusion of his veterans' benefits as income for child support - are beyond the scope of federal subject matter jurisdiction because of the Rooker-Feldman doctrine. See Rooker, 263 U.S. 413; Feldman, 460 U.S. 462. And because the district court lacked subject matter jurisdiction over either claim, it was unnecessary for the court to analyze Brackman's complaint differently for the two groups of defendants; the resolution for each is the same.

Brackman's first claim is that the defendants conspired to deprive him of access to the courts. In support of this claim he alleges that the Allen County circuit court failed to assign a judge to hear his petitions, failed to grant his motion for default, and failed to provide him with three pages of records. But Brackman

petitioned for and was denied a writ of mandamus by the state supreme court to compel the circuit court to act on his filings. He may not now challenge or seek damages under 42 U.S.C. § 1983 or related statutes on account of the supreme court's refusal to compel the circuit court to act; his only remedy was to seek certiorari under 28 U.S.C. § 1257. See Schmidt v. Schmidt, 324 F.3d 484, 486 (7th Cir. 2003); Gen. Auto Serv. Station LLC v. City of Ill., 319 F.3d 902, 905 (7th Cir. 2003).

Even if Brackman did not specifically raise each of the allegations mentioned here in his petition for a writ of mandamus, all issues relating to the circuit court's alleged inactions are barred. For Rooker-Feldman is not limited only to issues actually raised in state court but also encompasses claims "inextricably intertwined with the state-court judgment [such that] the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." See Lewis v. Anderson, 308 F.3d 768, 772 (7th Cir. 2002); Long v. Shorebank Dev. Corp., 182 F.3d 548, 557-58 (7th Cir. 1999). Because his federal complaint alleges that the circuit court's failure to assign a judge to his petitions, grant his motions, and provide him with records was all part of a conspiracy by the defendants to keep him out of state court, any success on this claim would mean that the state supreme court wrongly decided that the circuit court had not engaged in any wrongdoing. Each individual allegation is "inextricably intertwined" with the others, and the district court lacked jurisdiction to consider them even if they had not been raised individually in his petition for mandamus. See Lewis, 308 F.3d at 772.

Brackman's second claim is even more obviously barred. He argues that the defendants wrongfully interpreted the Indiana appellate court judgment to allow

his disability benefits to be withheld. But Brackman is really contesting the appellate court's determination that his veterans' benefits can be included for child support, not some independent action by the defendants. Cf. In re Paternity of C.L.H., 689 N.E.2d at 458 ("The [disability benefit] . . . does not appear to be a benefit from a 'means-tested public assistance' program which would be excluded from the definition [of gross income]."). Because Brackman's asserted injury stems directly from the judgment and not the defendants, his present suit requests collateral review of a state appellate court decision - a task that the district court lacks jurisdiction to undertake. See Homola v. McNamara, 59 F.3d 647, 650 (1995). "[A] plaintiff may not seek a reversal of a state court judgment simply by casting his complaint in the form of a civil rights action." Ritter v. Ross, 992 F.2d 750, 754 (7th Cir. 1993).

The judgments of the district court are therefore modified to reflect dismissal for lack of jurisdiction, and as modified, affirmed.

AFFIRMED as MODIFIED.

APPENDIX #2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

FILED
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MARK A. BRACKMAN, Plaintiff,	)	
v.	)	Civil No. 1:03-cv-068
STATE OF INDIANA, et al., Defendants.	)	

ORDER

This matter is before the court on a motion for summary judgment filed by the defendants, Allen County Attorney; County of Allen; Edwin Rousseau; Marla Irving; and Linda K. Bloom ("County Defendants"), on June 25, 2003. The plaintiff, Mark A. Brackman ("Brackman"), who is proceeding pro se, filed his response on July 23, 2003, to which the County Defendants replied on August 8, 2003.

Also before the court is a "Second Supplement to Add Ms. Brown and Ms. Blosser as Defendants for Cause that Laura L. Reuss Claims Clerks Acted on Their Own", filed by Brackman on July 28, 2003. The Court has construed Brackman's filing as a motion to amend. The County Defendants opposed the motion to amend on August 29, 2003. Brackman has not filed a reply.

For the following reasons, the motion for summary judgment will be granted and the motion to amend will be denied.

Summary Judgment Standard

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.

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R. Civ. P. 56(c). However, Rule 56(c) is not a requirement that the moving party negate his opponent's claim. Fitzpatrick v. Catholic Bishop of Chicago, 916 F.2d 1254, 1256 (7th Cir. 1990). Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery, against a party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and in which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The standard for granting summary judgment mirrors the directed verdict standard under Rule 50(a), which requires the court to grant a directed verdict where there can be but one reasonable conclusion. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). A scintilla of evidence in support of the non-moving party's position is not sufficient to successfully oppose summary judgment; "there must be evidence on which the jury could reasonably find for the plaintiff." Id. In Re Matter of Wildman, 859 F.2d 553, 557 (7th Cir. 1988); Klein v. Ryan, 847 F.2d 368, 374 (7th Cir. 1988); Valentine v. Joliet Township High School District No. 204, 802 F.2d 981, 986 (7th Cir. 1986). No genuine issue for trial exists "where the record as a whole could not lead a rational trier of fact to find for the nonmoving party." Juarez v. Ameritech Mobile Communications, Inc., 957 F.2d 317, 322 (7th Cir. 1992)(quoting Matsushita Electric Industrial Co., Ltd. V. Zenith Radio Corp., 475 U.S. 574, 586 (1986)).

Initially, Rule 56 requires the moving party to inform the court of the basis for the motion, and to identify those portions of the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which demonstrate the absence of a genuine issue of material fact, Celotex, 477 U.S. at 323. The non-moving party may oppose the motion with any of the evidentiary materials listed in Rule 56(c), but reliance on the pleadings

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alone is not sufficient to withstand summary judgment. Goka v. Bobbitt, 862 F.2d 646, 649 (7th Cir. 1988); Guenin v. Sendra Corp., 700 F.Supp 973, 974 (N.D. Ind. 1988); Posey v. Skyline Corp., 702 F.2d 102, 105 (7th Cir.), cert. Denied, 464 U.S. 960 (1983).

So that the district court may readily determine whether genuine issues of material fact exist, under Local Rule 56.1, the moving party is obligated to file with the court a "Statement of Material Facts" supported by appropriate citation to the record to which the moving party contends no genuine issues exist. In addition, the non-movant is obligated to file with the court a "Statement of Genuine Issues" supported by appropriate citation to the record outlining all material facts to which the non-movant contends exist that must be litigated. See, Waldridge v. American Hoechst Corp. et al., 24 F.3d 918 (7th Cir. 1994). In ruling on a summary judgment motion the court accepts as true the non-moving party's evidence, draws all legitimate inferences in favor of the non-moving party, and does not weigh the evidence or the credibility of witnesses. Anderson, 477 U.S. at 249-251, 106 S.Ct. at 2511. Furthermore, in determining the motion for summary judgment, the court

will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the "Statement of Genuine Issues" filed in opposition to the Motion. L.R. 56.1

Substantive law determines which facts are material; that is, which facts might affect the outcome of the suit under the governing law. Anderson, 477 U.S. at 248. Irrelevant or unnecessary facts do not preclude summary judgment even when they are in dispute. Id. The issue of fact must be genuine. Fed. R. Civ. P. 56(c), (e). To establish a genuine issue of fact, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the

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material facts." Matsushita, 475 U.S. at 586; First National Bank of Cicero v. Lewco Securities Corp., 860 F.2d 1407, 1411 (7th Cir. 1988). The non-moving party must come forward with specific facts showing that there is a genuine issue for trial. Id. A summary judgment determination is essentially an inquiry as to "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 251-52. Finally, the court notes that, "[i]t is a gratuitous cruelty to parties and their witnesses to put them through the emotional ordeal of a trial when the outcome is foreordained? And in such cases summary judgment is appropriate. Mason v. Continental Illinois Nat'l Bank, 704 F.2d 361, 367 (7th Cir. 1983).

Discussion

On or about February 20, 2003, Brackman filed his complaint in this matter against the State of Indiana, Attorney General Steve Carter, Governor Frank O'Bannon, Secretary of State Sue Anne Gilroy, Allen County Attorney, County of Allen, Commissioner Edwin Rousseau, Commissioner Marla Irving, Commissioner Linda K. Bloom, Stanley A. Levine and Ann Loni Hoang. The State of Indiana, Steve Carter, Frank O'Bannon, Sue Anne Gilroy, Stanley Levine and Ann Loni Hoang filed motions to dismiss, which were granted by Order dated June 2, 2003.

Brackman alleges that his constitutional rights were violated by the Clerks of the Allen Circuit and Superior Courts in that Brackman was allegedly not furnished with documents from his court packet after mailing a request for the documents, and that his rights were violated by the Allen Superior Court by virtue of the Court's alleged failure to act upon filings he made in conjunction with Allen Superior Case No. 02D07-8907-JP-425.

Brackman's claims arise from the fact that after filing a Summons and Claim/Petition in a

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case filed in Allen Superior Court, the alleged Respondent, Ann Loni Hoang, failed to answer. Complaint at ¶37. Thereafter, Brackman filed an "Application for an 'Entry of Default'" against Hoang, which was denied without a hearing. Id. Subsequent to that, the Clerk of Courts allegedly failed to send Brackman copies from the court packet as requested. Complaint at ¶38. Finally, the Indiana Supreme Court allegedly refused to assign a special judge to address the alleged wrongs Brackman asserted with respect to the

Allen Superior Court's treatment of his case. Complaint at ¶¶39-40.

Brackman claims that his rights pursuant to 42 U.S.C. § 1983 and 1985 have been violated by the County Defendants. Brackman claims that the County Defendants were responsible for the Clerk's failure to send him documents and alleged failure to take action as to his various filings in the Allen Superior Court. Brackman also claims that the County Defendants instructed or influenced judges and/or staff in the Allen Superior Court not to rule on his filings with respect to Case No. 02D07-8907-JP-425.

An action under Section 1983 is premised on a determination that conduct committed by a person acting under color of state law deprived another individual of rights, privileges and immunities secured by the Constitution or laws of the United States. A Section 1983 action must be based upon personal liability and recovery against an official cannot be vicariously imposed on a theory of respondeat superior. Williams v. Faulkner, 837 F.2d 304, 308 (7th Cir. 1988).

In support of their motion for summary judgment on the Section 1983 claims, the County Defendants argue that Brackman has not alleged that any of the County Defendants were personally involved in the wrongs allegedly perpetrated by the Clerk of Court of the Superior Court. The County Defendants point out that the Allen County Commissioners, Bloom, Irving

and Rousseau, and the Allen County Attorney, G. William Fishering, each stated in their affidavit that they took no action with respect to Brackman's request for documents or with respect to his filings in Case No.

02D07-8907-JP-425. The County Defendants further point out that, by law, they could take no action with respect to the alleged failures and wrongs by the Clerk or the Superior Court. With respect to the Superior Court, the County Defendants claim that it is axiomatic that only the Allen Superior Court has the right to make judicial determinations and to direct and control its court employees. (Ind. Const. Art. 3, § 1). Likewise, the Indiana Supreme Court in the case of Noble v. State, 21 N.E. 244, 246 (Ind. 1889), long ago resolved the issue of whether members of either the legislative or executive bodies could exercise any control over the judicial department when it stated that "the courts possess the entire body of intrinsic judicial power of the state, and the other departments are prohibited from assuming to exercise any part of that judicial power." Id.

In the present case, Brackman has alleged that members (the Commissioners) and agents (the Allen County Attorney) of the executive department of the County of Allen instructed or persuaded the Allen Superior Court, a part of the state's judicial department, to ignore pleadings filed in a case in the Allen Superior Court. The County Defendants argue that Indiana law does not allow such an occurrence and that, moreover, the County Defendants have testified that such occurrence did not, in fact occur, permissible or not.

The County Defendants further argue that, with respect to the Clerk of the Allen Circuit and Superior Courts, under Indiana law, the Clerk is a constitutionally created official. (Ind. Const. Art. 6, §2). The Clerk is not a county officer, but an officer of the circuit court. Parsons v. Bourff, 739 F. Supp. 1266, 1267 (S.D. Ind. 1989). As such, the County, through its Board

of Commissioners has no ability to control actions or activities of the Clerk or the Clerk's staff.

Moreover, according to the County Defendants, even if the Commissioners and their agents could control the Clerk, the facts in the present case show that they did no such thing with respect to Brackman's allegations. Commissioners Bloom, Irving and Rousseau and County Attorney G. William Fishering have denied instructing or influencing the Clerk of the Allen Circuit and Superior Courts to take any action whatsoever (or to fail to take action) with respect to Brackman's filings or requests. Additionally, the County Defendants testified that they did not know that Brackman was making requests or filing items with the Clerk until he filed his tort claim notice and complaint in this matter.

The County Defendants conclude that since they cannot be held liable on the basis of respondeat superior and since the evidence demonstrates that they took no action harming Brackman, their motion for summary judgment with respect to Brackman's Section 1983 claims must be granted.

In response, Brackman argues that he is alleging that "the County Defendants failed to investigate or cause to be investigated (i.e. did nothing, as admitted on their Affidavits), when they had a clear duty and obligation by law to act regarding reported Fraud and Rights violations committed in the County of Allen and noticed to them by Constructive and Actual notice." (Response at p. 5).

In reply, the County Defendants reiterate their argument that the Office of the Clerk and the state courts are separate and distinct from the Board of Commissioners of Allen County, and that the

Commissioners and their agent, the Allen County Attorney, had no authority to conduct an investigation into allegations of fraud and had no right to attempt to correct alleged wrongs
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dealt by those persons and/or entities.

It is clear to this court that the County Defendants are correct. There is absolutely no evidence that the County Defendants took any action which caused any harm to Brackman. The County Defendants did not owe a duty to Brackman to control the activities of the Clerk, nor did they have the authority to do so. Moreover, the County Defendants did not have the authority to conduct any sort of investigation regarding the state courts and/or their staff. Accordingly, the County Defendants' motion for summary judgment will be granted with respect to Brackman's claims under Section 1983.

The court will next turn to Brackman's claims under Section 1985. Section 1985 defines a variety of conspiracies, and subsection 3 of Section 1985 provides a right of action for victims of conspiracies. Under Section 1985, a plaintiff must allege that his rights were violated as a result of some class-based animus. Roach v. City of Evansville, 111 F.3d 544, 547 (7th Cir. 1987). The County Defendants argue that Brackman has failed to make such an allegation and offers no facts in support of a contention that he was discriminated against because of some class-based animus. Thus, the County Defendants conclude that Brackman has failed to state a claim under §1985 and they are entitled to summary judgment as a matter of law.

In response, Brackman states that he is "a single white male, with 100% disability from service connected

duty as an American Veteran as his class-based animus for discrimination and a victim of this conspiracy of fraud over the course of several years and continuing to this day." Even assuming that Brackman's assertion is adequate, he fails to offer any facts that would support a contention that he was discriminated against because he is white and/or disabled. In fact, there is no evidence that any of the defendants were aware of Brackman's race or alleged

disability. Accordingly, summary judgment will be granted in favor of the County Defendants on Brackman's Section 1985 claims.

Next the court will turn to Brackman's requests that the state court decisions against him in Allen Superior Court Case No. 02D07-8907-JP-425. The County Defendants correctly argue that such claims are barred by the Rooker-Feldman doctrine. The Rooker-Feldman doctrine prohibits federal district courts from reviewing state court civil judgments, including all claims that are inextricably intertwined with those judgments. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Therefore, to the extent that Brackman seeks to have this court review the actions of the Allen Superior Court (or any other state court), such claims are barred and summary judgment is appropriate in favor of the County Defendants.

Finally, the court will turn to Brackman's motion to amend, in which he seeks "to allow Lisbeth Blosser, Therese M. Brown and Laura L. Reuss to be included as defendants nunc pro tunc...." Ms. Blosser and Ms. Brown are the former and current Clerks of the Allen

Circuit and Superior Courts. Ms. Reuss is the County Defendants' attorney in this case.

Rule 15 of the Federal Rules of Civil Procedure, which governs amendments to pleadings, provides that a party may amend its pleadings after a responsive pleading has been served only by leave of court or by written consent of the adverse party. The county Defendants have filed a responsive pleading and have indicated that they do not consent to the amendment. Thus, the complaint may only be amended by leave of court. While amendments are to be liberally allowed, "courts in their sound discretion may deny a proposed amendment if the moving party has unduly delayed in filing the motion, if the opposing party would suffer undue

prejudice, or if the pleading is futile." Compania Management Company v. Rooks Pitts & Poust, 290 F.3d 843, 849 (7th Cir. 2002)(citing Foman v. Davis, 371 U.S. 178, 181-82 (1962)).

In the present case, Brackman has not provided a proposed amended complaint as required by N.D. Ind. L.R. 15.1. However, the County Defendants argue that based upon the presumed content of any such amendment, it is clear that any such proposed amendment should be denied. The County Defendants assert that to the extent that Brackman seeks to name Brown and Blosser in order to question them as witnesses, their becoming defendants to this matter is not necessary. The County Defendants further assert that to the extent that Brackman is claiming that Brown and Blosser violated his constitutional rights by failing to assign a judge, failing to send him copies of a court

packet or failing to rule on filings made by Brackman in the Allen Superior Court, that this court should deny Brackman's request because Brackman has unduly delayed his request to amend and because any such amended pleading would be futile.

With respect to timeliness, the County Defendants point out that it is clear from a review of Exhibits "F", "I", and "N" to Brackman's "Affidavit of Plaintiff in Support of Plaintiff's Response to County Defendants' Motion for Summary Judgment" that Brackman believed the Clerk of the Allen Circuit and Superior Court had violated alleged "duties" as early as December 13, 2002, at least two months before the filing of the present action. The County Defendants also maintain that it is clear that Brackman understood that the office of the Clerk and the office of the Board of Commissioners of the County of Allen were two separate offices as early as January 8, 2002, when he sent a request for payment history to the office of the Clerk, as opposed to the office of the Board of Commissioners of the County of Allen. The County Defendants argue that Brackman failed to name Brown and/or Blosser to this suit when he initially filed, even though

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he had a clear understanding that the offices are independent of one another.

In Morissette v. Peters, 45 F.3d 1119 (7th Cir. 1994), the seventh Circuit Court of Appeals upheld a trial court's denial of a motion to amend in part because the plaintiff moved to amend late in the proceedings "when trial or resolution of the case via summary judgment was imminent." Id. At 1123. This court agrees

with the County Defendants that the same result should occur in the present case, and holds that Brackman's delay in seeking to amend requires that the motion be denied.

The County Defendants further argue that Brackman's motion to amend should be denied because it is futile. The County Defendants point out that Brackman's filings make it clear that he wishes to amend his complaint in order to claim that the Clerks (Brown and Blosser) violated his rights by failing to assign a judge to an Allen Superior Court case, failing to send copies out of a court packet, and failing to rule on various motions. With respect to the copies, the County Defendants argue that Brackman's rights have not been violated by any alleged failure to provide documents because Brackman has not been harmed in his ability to seek redress for his grievances. The County Defendants also claim that Brackman did not suffer deprivation of property without due process as a result of any alleged action or inaction on the part of the Clerks and that, to the extent the Clerks failed to carry out their duties, any alleged failure amounts to no more than mere negligence, which is not actionable under Section 1983. The County Defendants acknowledge that the Clerk has an obligation to make public records available for inspection. However, the County Defendants maintain that the Clerk has no obligation to photocopy records and send them across the United States[1]. The County Defendants further argue that it is not the

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[1] Brackman resides in Peoria, Arizona.

Clerk's responsibility to rule on motions or to assign judges or to act in any fashion with respect to cases pending in the Superior Court other than to accept filings and direct them to the appropriate file.

This court agrees with the County Defendants that, for the foregoing reasons, any amended complaint filed by Brackman would inevitably be disposed of through a dispositive motion. Therefore, Brackman's motion to amend will be denied for this additional reason.

Conclusion

Based on the foregoing, the County Defendants' motion for summary judgment is hereby GRANTED. Further, Brackman's motion to amend is hereby DENIED.

Entered: October 17, 2003.

/s/
William C. Lee, Judge
United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

FILED
03 JUN 27 AM11:14

MARK A. BRACKMAN, Plaintiff,	)	
v.	)	Civil No. 1:03-cv-068
STATE OF INDIANA, et al., Defendants.	)	

ORDER

On June 2, 2003, this court entered an order granting defendant Ann Loni Hoang's motion to dismiss, granting the State Defendants' motion to dismiss, and granting defendant Stanley Levine's motion to dismiss. As a result of this order the following defendants were granted a favorable judgment: Ann Loni Hoang; Stanley Levine; the State of Indiana; Steve Carter, Attorney General of Indiana; Governor Frank O'Bannon, Governor of the State of Indiana; and Sue Anne Gilroy, Former Secretary of the State of Indiana. The remaining named defendants in this case are: Allen County Attorney; County of Allen; Allen County Commissioners; Edwin Rousseau; Marla Irving; and Linda K. Bloom. These Defendants are known as the "County Defendants".

On June 2, 2003, the Clerk of the Court inadvertently entered Judgment in favor of all of the defendants. On June 16, 2003, the plaintiff, Mark A. Brackman ("Brackman") filed a Notice of Appeal. On June 25, 2003, the County Defendants filed a motion for summary judgment.

The Clerk's Judgment entered on June 2, 2003 is hereby VACATED and SET ASIDE. However, upon review of this cause the court has determined that there is no just reason for delay in entering a final judgment in favor of defendants Ann Loni Hoang, Stanley Levine, the State of

Indiana; Steve Carter, Governor Frank O'Bannon, and Sue Anne Gilroy. Thus, the Clerk of the Court is instructed to enter an such a Judgment, entering final judgment with respect to these six defendants, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

The County Defendants' motion for summary judgment shall be briefed out in accordance with applicable Local Rules. As Brackman is proceeding pro se, the Court issues contemporaneously therewith a Lewis v. Faulkner notice informing Brackman of his responsibility to Respond to the motion for summary judgment.

SO ORDERED this 27th day of June, 2003.

/s/
William C. Lee, Judge
United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

FILED
03 JUN 2 AM 9:55

MARK A. BRACKMAN, Plaintiff,	)	
v.	)	Civil No. 1:03cv68
STATE OF INDIANA, et al., Defendants.	)	

ORDER

This matter is before the court on three motions to dismiss, a motion for sanctions, a motion to enter default, an "objection to order", and a motion to change venue.

On March 3, 2003, defendant Ann Loni Hoang ("Hoang") proceeding pro se, filed a motion to dismiss and a motion for sanctions. On March 17, 2003, plaintiff Mark A. Brackman ("Brackman"), proceeding pro se, filed a "General Response to Motions to Continue, Motions for Additional Time, Motion to Dismiss and Other Preliminary Motions, Nunc Pro Tunc". Hoang has not filed a reply.

On March 20, 2003, the State Defendants[1] filed a motion to dismiss. On March 28, 2003, Brackman filed a response to the motion to dismiss. On April 10, 2003, Brackman filed a "Supplement to Complaint Persuant [sic] to Notice and Order Dated March 24, 2003" which he states is "in supplement to Response to Motion to Dismiss filed by the State Defendants...." Thus, the court will construe Brackman's April 10, 2003 filing as a supplemental response to the

[1] The State Defendants are: the State of Indiana; Steve Carter, Attorney General of Indiana; Governor Frank O'Bannon, Governor of the State of Indiana; and Sue Anne Gilroy, Former Secretary of the State of Indiana.

Page 2 (top)

motion to dismiss[2]. The State Defendants have not filed a reply.

On April 21, 2003, defendant Stanley A. Levine ("Levine") filed a motion to dismiss, On April 28, 2003, Brackman filed a response to the motion to dismiss and also filed a "Trial Memorandum for Hearing on May 2, 2003", which the court construes as a supplemental response. Levine filed his reply on May 5, 2003. On May 19, 2003, Brackman filed a "Supplement to Response to Motion to Dismiss on Behalf of Defendant Stanley A. Levine".

On March 28, 2003, Brackman filed an "Application for Entry of Default of Defendant Ann Loni Hoang". Also, on May 5, 2003, Brackman filed an "Objection to 'Order' Dated April 28, 2003 For Cause". Finally, on May 23, 2003, Brackman filed a "Motion for Change of Venue for Cause".

Discussion

This case essentially arises from the decision of the Indiana courts to order Brackman to pay child support[3]. Brackman has now filed his second complaint in this court against participants in the state court case, and various state and county officials, in an attempt to reverse the state court decision.[4]

[2] Brackman has attempted to amend his complaint by added new allegations in several of his response to the motions to dismiss. These new allegations are improper and will not be considered. To the extent Brackman intends his responses to be a motion to amend complaint, such motion is denied.

[3] See Matter of the Paternity of C.L.H., Hoang v. Brackman, 689 N.E.2d 456 (Ind. Ct. App. 1998), transfer denied, 698 N.E.2d 1191.

[4] Brackman's previous complaint in this court, 1:00cv423, was dismissed on or about March 7, 2001.

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State Defendants' Motion to Dismiss

Sometime around August 20, 2001, Brackman filed a summons and complaint on Ann Loni Hoang in the Allen Superior Court under cause number 02D07-8907-JP-000425. Brackman filed another complaint and summons on or about January 24, 2002, because he believed the original service was flawed. After Hoang failed to answer, Brackman filed a motion for default judgment, which was denied. Brackman requested the Indiana Supreme Court to appoint a special judge, which request was denied.

In his present complaint, Brackman alleges that the State Defendants conspired with the other defendants to deprive him of his right to redress. Brackman further asserts that the State Defendants are "directly or indirectly responsible for the acts, bad acts and omissions of Defendant County of Allen, Defendant County Attorney, including but not limited to an agent

Clerk of the Allen County Court as their supervisor or superior. Brackman also alleges that the Secretary of State and Attorney General or their agents are the State's lawmaking officers or policy-making officials, and are therefore liable. Finally, Brackman alleges that the State or its agents, having responsibility for the payment of salaries, wages financial or other pecuniary benefits to the other defendants is responsible for the acts of the other defendants. Brackman seeks monetary damages from the State Defendants.

A claim may be dismissed under Fed.R.Civ.P. 12(b)(6) only if it is beyond doubt that there are no set of facts under which the complaint's allegations would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In deciding whether to grant a motion to dismiss, the court must accept the factual allegations as true and draw all reasonable inferences in favor of the plaintiff. Vickery v. Jones, 100 F.3d 1334, 1341 (7th Cir. 1996).

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Page 4 (top)

The State Defendants first argue that Brackman's suit is barred by the Eleventh Amendment. The Eleventh Amendment deprives the federal courts of subject matter jurisdiction to entertain claims against a state. Pennhurst State School and Hospital v. Halderman, 104 S.Ct. 900 (1984). Suits against state officials in their official capacities are deemed as against the State itself and are therefore equally barred. Kentucky v. Graham, 105 S.Ct. 3099 (1985); Meadows v. State of Indiana, 854 F.2d 1068 (7th Cir. 1988). Clearly the present suit against the State Defendants is barred by the Eleventh Amendment as Brackman has sued state officials in their official capacities.

The State Defendants further argue that the Rooker-Feldman doctrine provides an additional basis for granting their motion to dismiss. The Rooker-Feldman doctrine prohibits federal district courts from reviewing state court civil judgments, including all claims that are inextricably intertwined with those judgments. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). The State Defendants correctly argue that because Brackman is essentially asking this court to review the actions of an Indiana court, this court must refrain from hearing his claim.

The court notes that this is Brackman's third attempt to attack the defendants in federal court. Brackman previously filed a substantially similar complaint in the United States District Court for the District of Arizona under Cause Number CIV-99-19750PHX-PGR, and in this court under Cause Number 1:00cv423. Both this court and the District Court for the District of Arizona dismissed Brackman's complaint due to lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine. Despite Brackman's protestations to the contrary, the Rooker-Feldman doctrine continues to be applicable to his claims and acts as a bar to such claims.

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Next, the State Defendants argue that respondeat superior cannot be a basis for liability. Generally, an action under Section 1983 is premises upon a determination that conduct committed by a person acting under color of state law deprived another individual of rights, privileges and immunities secured by the Constitution or laws of the United States. Parratt v.

Taylor, 451 U.S. 527, 535 (1981), overruled in part on other grounds, Daniels v. Williams, 474 U.S. 327 (1986). This type of action is "based upon personal liability and predicated upon fault." Wolfe-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). Recovery against a supervisory official cannot be vicariously imposed on a theory of respondeat superior Williams v. Faulkner, 837 F.2d 304, 308 (7th Cir. 1988), aff'd sub nom. Neitzke v. Williams, 490 U.S. 319 (1989). Nor can liability be established by a showing of negligent supervision on the official's part Rascon v. Hardiman, 803 F.2d 269, 273 (7th Cir. 1986).

In the present case, Brackman has made no allegations of personal liability on the part of the Governor, Attorney General or Secretary of State. Rather, he asserts that they are liable because they are responsible for the acts of their agents and employees. As a Section 1983 claim cannot be based upon respondeat superior, Brackman's complaint fails to state a cause of action and must be dismissed as to the State Defendants.

Finally, the State Defendants argue that Brackman fails to state a claim under 42 U.S.C. §1985. In order to establish a cause of action under Section 1985, a plaintiff must show that a defendant conspired with another person to deprive the plaintiff, or a class of which the plaintiff was a member, of equal protection of the laws or of equal privileges and immunities under the law. Koch v. Mirza, 869 F. Supp. 1031, 1038 (W.D.N.Y. 1994). Claims founded on Section 1985(2) must demonstrate some interference with the course of justice in state courts. Davis v. Hudgins, 896 F.Supp 570. Claims founded on Section 1985(3) must allege a class-based discriminatory motive on the part of the

conspirators. Rosadio v. Curtis, 885 F.Supp. 1538, 1541 (M.D. Fla. 1995). In any case, a civil rights complaint is not sufficient unless it states specific allegations of fact indicating a deprivation of rights. Koch, 869 F.Supp. At 1037. Mere conclusory allegations are not sufficient to state a claim under Section 1985. Davis, 896 F.Supp. at 571.

This court agrees with the State Defendants that Brackman's mere accusations that these defendants violated Section 1985 are insufficient to support a claim. Therefore, the motion to dismiss will be granted.

Stanley Levine's Motion to Dismiss

Defendant Levine, when he was engaged in the private practice of law, represented Lori Hoang in a child support dispute between Hoang and Brackman. While it is unclear exactly what claims Brackman is alleging against Levine, it is clear that Brackman's claims arise from the state court suit and Brackman's attempts to seek redress from the Indiana Supreme Court.

Levine argues that the Rooker-Feldman doctrine bars any claim relating to Levine's role in the child support dispute. As discussed above, the Rooker-Feldman doctrine prohibits federal district courts from reviewing state court civil judgments. As Brackman is attempting to attack the state court proceedings, his claims against Levine are barred.

Levine further argues that, in any event, Brackman fails to state any claim against Levine with regard to the treatment of Brackman's "Summons and Claim/Petition" which was allegedly filed on August 20, 2001 in the state courts. It appears that the allegation in Brackman's

Page 6
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complaint concerning Levine relate to Levine's involvement in the child support dispute. The only paragraph in the complaint which alleges any connection between Levine and the treatment of Brackman's Claim/Petition is paragraph 47, wherein Brackman alleges that all of the defendants "have acted in concert, individually, one with another, jointly, severally, or in various combinations directly or indirectly with intent to violate Plaintiff's due process rights and to violate Plaintiff's rights to redress of his grievances regarding obtaining a hearing on various 'issues' and motions." Beyond this vague allegation of Levine's involvement in a conspiracy, Brackman's complaint contains no allegations identifying conduct in which Levine might have engaged that has injured Brackman. Thus, this court agrees with Levine that Brackman has failed to state a claim against Levine with respect to the treatment of his Claim/Petition. Moreover, to the extent that Brackman is attempting to assert claims against Levine under Section 1983 or Section 1985, such claims must likewise be dismissed. With respect to Section 1983, it is clear that Levine is not a state actor. The mere fact that an attorney is a member of the State Bar does not mean the attorney acts under the color of state law, Miller v. Duffin, 637 F.Supp. 496, 502 (N.D.Ind. 1986). With respect to Section 1985, it is clear that Brackman has failed to allege that his rights were violated as a result of some class-based animus. Thus Brackman has failed to state a claim under Section 1985. Roach v. City of Evansville, 111 F.3d 544, 547 (7th Cir. 1997).

Defendant Ann Loni Hoang's Motion to Dismiss and Motion for Sanctions

Hoang, proceeding pro se, has requested that this case be dismissed, based on all the previous dismissals. Hoang states that she has not had any contact with Brackman for the last 14 years and that he has not paid any child support. Hoang further states that Brackman has filed repetitive lawsuits against her since 1996 and that she can no longer afford his harassment as her lawyers' fee has run up to over $40,000. Hoang also requests that the court sanction Brackman to prevent him from filing any additional lawsuits.

It is unclear from Brackman's complaint precisely what he is alleging against Hoang. As with the other defendants, it appears that Brackman is asserting that Hoang was involved in some sort or conspiracy in state court, which resulted in the court ordering him to pay child support out of his veteran's benefits. As noted above, this court is prohibited by the Rooker-Feldman doctrine from considering Brackman's collateral attacks on the state court judgment and proceedings. Moreover, as Hoang is not a state actor, Brackman has no basis for Section 1983 claims against her, nor has Brackman sufficiently plead a Section 1985 claim. Accordingly, Hoang's motion to dismiss will be granted.

Additionally, Brackman will be ordered to show cause why he should not be sanctioned for filing frivolous lawsuits against Hoang. It is clear that Brackman has filed at least three federal cases involving the state court proceedings arising from his child support dispute with Hoang. All cases, including this one, have been determined to be totally meritless. Even though Brackman is proceeding on his own behalf, without benefit of trained counsel, Brackman is still bound by

the dictates of Rule 11 of the Federal Rules of Civil Procedure. Wright v. Tackett, 39 F.3d 155 (7th Cir. 1994).

Brackman's Motion for Entry of Default Against Hoang

Brackman asserts that Hoang has failed to file a responsive pleading or otherwise defend within the time period required by law and that he is therefore entitled to an entry of default. Brackman asserts that Hoang was personally served with his complaint on February 28, 2003 and has failed to respond.

The record shows, however, that Hoang timely filed a motion to dismiss on March 3, 2003. As a motion to dismiss is a responsive pleading, Brackman is not entitled to an entry of default. See Fed.R.Civ.P. 12(b).

Brackman's Objection to "Order"

Brackman states that he objects to an order issued by Magistrate Judge Cosbey, dated April 28, 2003. Brackman claims that the court "tried to trick Plaintiff into entering the Magistrate's jurisdiction...", and insists that the Magistrate is biased against him.

The order to which Brackman refers to is an order disposing of Brackman's "Objection to 'Order' Dated March 25, 2003 For Cause". In this April 28, 2003 order, this court upheld Magistrate Cosbey's ruling on Brackman's motion to compel, as Magistrate Cosbey's ruling was not clearly erroneous or contrary to law. Brackman now complains that the Magistrate's order was issued before Brackman's reply was belatedly filed. This court has reviewed the reply, which was filed on March 28, 2003, and finds that nothing in the reply would change the underlying ruling in the Magistrate's March 25, 2003 order.

The court assures Brackman that no trickery is involved with respect to Magistrate's jurisdiction over this case. As is routine in this court, all non-dispositive matters are referred to the Magistrate judge for ruling. Thus, by virtue of filing a case in this court, Brackman has "entered into" the Magistrate's jurisdiction. Therfore, Brackman's current Objection to Order
Page 9
Page 10 (top)
will be denied.

Brackman's Motion for Change of Venue

Brackman has requested a change of venue because he believes that this court is violating his rights by not issuing an entry of default against defendant Hoang, and by ignoring his objections to orders. Brackman states that he believes he cannot obtain a fair or impartial hearing "where various court officials are acting to protect their friend, (also a judge) who is a defendant in the same town or county as Fort Wayne."

Brackman has not identified any other division or district to which venue could properly be transferred. Nor does Brackman discuss 28 U.S.C. §1404, relating to change of venue, or explain how a change of venue could possibly be "for the convenience of parties and witnesses".

In any event, there is no evidence that Brackman's rights are being violated. The simple truth of the matter is that Brackman has repeatedly filed frivolous and meritless claims and motions. If Brackman does not agree with this court's rulings, he may appeal to the United States Court of Appeals for the Seventh Circuit.

Conclusion

On the basis of the foregoing, the following motions are hereby GRANTED:

(1) Defendant Ann Loni Hoang's motion to Dismiss;

(2) State Defendants' Motion to Dismiss; and

(3) Defendant Levine's Motion to Dismiss.

Further, the following motions are hereby DENIED:

(1) Brackman's Application for Entry of Default of Defendant Ann Loni Hoang;

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Page 11 (top)

(2) Brackman's Objection to "Order" Dated April 28, 2003 For Cause; and

(3) Brackman's motion for Change of Venue for Cause.

Further, with respect to Hoang's motion for sanctions, Brackman is hereby ORDERED TO SHOW CAUSE as to why he should not be sanctioned for violating Rule 11 of the Federal Rules of Civil Procedure. Brackman shall respond to the Order to Show Cause within 30 days of the date of this order.

Entered: June 2, 2003.

/s/
William C. Lee, Judge
United States District Court

[Following is a transcribed copy of a poorly hand written Letter from Ann Loni Hoang to Judge Lee, (ex parte communications) of the United States District Court Northern District of Indiana, Fort Wayne Division, on lined paper which was followed by a reduced Photostat copy of the actual letter (The Clerk of this Court refused to accept copy) which Judge Lee has described as being 3 Motions, without noting insufficiencies, lack of certification of service, an un-sworn statement, no return mailing address, etc. Spelling errors have not been corrected in this typewritten transcription.]

FILED
03 MAR-3 PM 1:39

Mark A. Brackman
VS
State of IN

ANN LONI HOANG

Case # 1:030V068
March 03, 03

Dear Sir,

Please see attachments, I would like to have this case dismissed based on all the previous dismsaslalls from the Supperime Court , lower Court, and any other Courts , including Arzizona Court's dismissall.

We have not had any contact with mark Brackman for the last 14 yrs He ~~do~~ has not paid any child support But he has kept filing lawsuits agains us Since 1996 (About 3,4 times a years) My Lawyers' fee has run

up to $40,000 - $50,000 dollars. Iam
no longer able to continue with
his harassment

Thank-you.
A. Loni Hn /s/

Footnote: Please Sanction him from
filing any frerther fpreviously
lawsuits and fine him for
çomtempt of Court ~~when~~ Because
he doesn't follow Court order.

2

Mark A. Brackman
P.O. Box 2611
Peoria, AZ 85380
(623) 487-9060
(pro per, not pro se)

[File stamped on February 20, 2003]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

MARK A. BRACKMAN, Plaintiff, - vs - STATE OF INDIANA; STEVE CARTER, ATTORNEY GENERAL FOR THE STATE OF INDIANA; GOVERNOR FRANK O'BANNON, GOVERNOR OF THE STATE OF INDIANA; SUE A. GILROY, SECRETARY OF STATE; ALLEN COUNTY ATTORNEY; COUNTY OF ALLEN; ALLEN COUNTY COMMISSIONERS; EDWIN ROUSSEAU, Commissioner; MARLA IRVING, Commissioner; LINDA K. BLOOM, Commissioner; STANLEY A. LEVINE, (An Attorney); ANN LONI HOANG, real party in interest, Defendants.	No. 1:03CV068 COMPLAINT

Plaintiff alleges:

1. This case is where Plaintiff (pro per, not pro se) filed a Petition in a County Court for redress of grievances was ignored by Defendant Ann Loni who failed to Answer and the clerk of the court refused to file an "Entry of Default" – Twice. Plaintiff filed Motions that were ignored. Plaintiff filed for intervention by the Supreme Court and was denied due process. Plaintiff filed with risk management and has exhausted all State remedies. It is a prima facie case of a First and Fifth amendment rights violation where the question is whether or not Plaintiff's right to Petition for redress of grievances and due process have been violated.

IN THE INDIANA SUPREME COURT

FILED
AUG 13 2002

STATE EX REL. BRACKMAN, Mark A., Relator,	)	
v.	)	cause no.
THE ALLEN SUPERIOR COURT, LISBETH BLOUSER, Clerk of the Court; the HONORABLE WILLIAM L. BRIGGS, as Judge thereof; STANLEY LEVINE, attorney; ATTORNEY GENERAL'S OFFICE and agent; ANN LONI HOANG, Respondents.	)	02S00-0207-OR-408

Order Dismissing Original Action

Mark A. Brackman, *pro se*, has submitted a "Application For Petition For Writ of Mandamus Or In The Alternative Emergency Petition For Order To Show Cause Why The Relief Requested Should Not Be Granted Regarding An Original Action Of First Impression Pursuant To Indiana Constitution, Art 7, Sec 4 Or Indiana Appellate Rule 4(B)(3)" and accompanying application papers. Relator seeks relief under the provisions of the Rules of Procedure for Original Actions. The relator's pleadings are procedurally deficient in that they do not comply with the rules in many respects. However, the Court looks past the procedural defects and addresses the original action request on the merits.

The relator has failed to show the respondent trial court has exceeded its jurisdiction or the failure to act when under a duty to act and/or that the remedy available on appeal would be wholly inadequate. Original Action Rule 3(A). Because the relator seeks an unquestionably inappropriate remedy under the rules and law governing writs of mandamus or prohibition, this original action is DISMISSED. See original Action Rule 2(D). The relator is reminded that no petitions for rehearing or motions to reconsider are allowed to be filed. Original Action Rule 5(C).

The Clerk is directed to send a copy of this order to Mark A. Brackman, 7027 W. Turquoise Avenue, Peoria, AZ, 85345; to the Allen County Superior Court; to the Honorable William L. Briggs; to any counsel of record; and to Steve Carter, Attorney General of Indiana.

Done at Indianapolis, Indiana this 13th day of August, 2002.

/s/
Randall T. Shepard
Chief Justice of Indiana

CIRCUIT & SUPERIOR COURTS
38TH JUDICIAL CIRCUIT
ALLEN COUNTY, INDIANA
11/13/2001

BRACKMAN MARK
PO BOX 2611
PEORIA AZ 85380

JUVENILE PATERNITY OF
CASE NUMBER: 02D07-8907-JP-000425
VS
HOANG CHARISSA LONI

NOTICE

PLEASE TAKE NOTICE OF THE FOLLOWING ACTION OF THE COURT:

11/13/2001 THE COURT TAKES JUDICIAL NOTICE OF THE RECORD AND DENIES THE RESPONDENT'S APPLICATION FOR DEFAULT AGAINST PETITIONER ANN LONI HOANG FILED ON OCTOBER 11, 2001.

CEM

APPENDIX #9 Attached to Dkt #2

ALLEN CIRCUIT AND SUPERIOR COURTS
38TH JUDICIAL CIRCUIT - ALLEN COUNTY,
INDIANA PAGE 1

****

**** CONFIDENTIAL ****

****

CHRONOLOGICAL CASE SUMMARY
AS OF 04/08/2003

JUVENILE PATERNITY OF PLAINTIFF(S) V. / AND HOANG CHARISSA LONI DEFENDANT(S)

CASE NUMBER: 02D07-8907-JP-000425

PETITIONER:	HOANG ANN LONI 5116 HOLLY OAK RD FORT WAYNE IN 46845
ATTORNEY:	LEVINE STANLEY A
PHONE:	(260) 449-7544
FAX:	(260) 449-7495
ATTORNEY NO:	8788 ALLEN SUPERIOR COURT 715 S CALHOUN ST ROOM 317 FORT WAYNE IN 46802
CHILD:	HOANG CHARISSA LONI
JUDGE:	UNASSIGNED JUDGE
DISPOSED DATE:	10/31/1989
STATUS:	DECIDED

RESPONDENT:	BRACKMAN MARK PO BOX 2611 PEORIA AZ 85380

GARNISHEE DEFENDANT / EMPLOYER:
OPM
ATTN COBB
PO BOX 17
WASHINGTON DC 20017

GARNISHEE DEFENDANT / EMPLOYER:
VETERANS AFFAIRS
575 N PENNSYLVANIA STREET
INDIANAPOLIS IN 46204

Date Chronological Case Summary Of Filings And Proceedings	Notice RJO Sent

DEC 18 2002
RE: RS BRACKMAN MARK
CORRESPONDENCE RE: CHILD SUPPORT FILED.
AJ

AUG 26 2002
RE: RS BRACKMAN MARK
NOTICE OF VIOLATION OF DUE PROCESS AND VOID ORDER

Date Chronological Case Summary Of Filings And Proceedings	Notice RJO Sent

FILED
AJ

AUG 15 2002
ORDER DISMISSING ORIGINAL ACTION ENTERED ON 08/13/2002 RECEIVED THIS DATE FROM THE SUPREME COURT AND MADE A MATTER OF RECORD HEREIN.

JUL 29 2002
RE: RS BRACKMAN MARK
SUPPLEMENT TO APPLICATION FOR PETITION FOR WRIT OF MANDAMUS FILED. AJ

JULY 29 2002
RE: RS BRACKMAN MARK
APPLICATION FOR PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE EMERGENCY PETITION FOR ORDER TO SHOW CAUSE WHY THE RELIEF REQUESTED SHOULD NOT BE GRANTED AND ORIGINAL ACTION OF FIRST IMPRESSION PURSUANT TO INDIANA CONSTITUTION, ART 7, SEC OR INDIANA APPELLATE RULE 4(B)(3) FILED AJ

MAY 13 2002
RE: RS BRACKMAN MARK
NOTICE OF APPLICATION AND APPLICATION FOR THE APPOINTMENT OF A SPECIAL JUDGE PURSUANT TO INDIANA RULES OF TRIAL PROCEDURE RULE 53.1 (A) FOR CAUSE, AND REQUEST FOR DEFAULT JUDGMENT NUNC PRO TUNC FILED. AJ

MAY 10 2002
RE: RS BRACKMAN MARK
PETITION FOR ORDER TO SHOW CAUSE AND SUPPLEMENT OF THE ORIGINAL PETITION TO CLARIFY THE RECORD DATED JANUARY 18, 2002 AND FILED JANUARY 22, 2002 FILED. AJ

APRIL 12 2002
PETITION FOR ORDER TO SHOW CAUSE AND SUPPLEMENT TO THE ORIGINAL, PETITION TO CLARIFY THE RECORD DATED JANUARY 18, 2002 AND FILED JANUARY 18, 2002 FILED. AJ

MAR 25 2002
RE: RS BRACKMAN MARK
MOTION FOR SUMMARY JUDGMENT AGAINST PETITIONER ANN LONI HOANG FILED. AJ

MAR 18 2002
RE: RS BRACKMAN MARK
APPLICATION FOR JUDGMENT OF DEFAULT AGAINST PETITIONER ANN LONI HOANG FILED. AJ

MAR 11 2002
RE: RS BRACKMAN MARK
APPLICATION FOR DEFAULT AGAINST PETITIONER ANN LONI HOANG AND ENTRY OF DEFAULT FILED. AJ

FEB 22 2002

RE: RS BRACKMAN MARK
AFFIDAVIT OF SERVICE OF PROCESS FILED. AJ

FEB 19 2002
RE: RS BRACKMAN MARK

MOTION TO SPECIFICALLY FIND THAT
RESPONDENT'S COMPENSATION FROM VA
RESULTS FROM MEANS-TESTING FORM 10-10
FILED. AJ

FEB 13 2002
RE: RS BRACKMAN MARK
MOTION TO SPECIFICALLY FIND THAT
RESPONDENT'S COMPENSATION FROM VA IS
NOT IN THE NATURE OF INSURANCE
FILED. AJ

JAN 29 2002
RE: RS BRACKMAN MARK
MOTION FOR COURT REPORTER, MOTION FOR
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND AN APPROPRIATE JUDGMENT THEREON
AND MOTION TO SPECIFICALLY FIND THAT
RESPONDENT'S COMPENSATION FROM VA
RESULTS FROM 38 U.S.C. 5301 FILED. AJ

JAN 25 2002
RE: RS BRACKMAN MARK
MOTION FOR CORRECTION OF THE RECORD
(EXPEDITED RULING REQUESTED) FILED. AJ

JAN 25 2002
RE: PE HOANG ANN LONI [SIC]
SUMMONS AND PETITION ISSUED FOR SERVICE
BY CERTIFIED MAIL.
01/30/2002 = DATE CLAIMED.
= DATE RETURNED UNCLAIMED.
= DATE GREEN RECEIPT CARD
RETURNED UNSIGNED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

FILED
03 JUN 2 AM 9:55

MARK A. BRACKMAN, Plaintiff,	)	
v.	)	Civil No. 1:03cv68
STATE OF INDIANA, et al., Defendants.	)	

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On March 28, 2003, Brackman filed an "Application for Entry of Default of Defendant Ann Loni Hoang". Also, on May 5, 2003, Brackman filed an "Objection to 'Order' Dated April 28, 2003 For Cause". Finally, on May 23, 2003, Brackman filed a "Motion for Change of Venue for Cause".

Discussion

This case essentially arises from the decision of the Indiana courts to order Brackman to pay child support[3]. Brackman has now filed his second complaint in this court against participants in the state court case, and various state and county officials, in an attempt to reverse the state court decision.[4]